



11 CFR Parts 1, 4, 5, 6, 100, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 114, 116, 200, 201, 300, 9003, 9004, 9007, 9032, 9033, 9034, 9035, 9036, 9038, and 9039

[NOTICE 2022-20]

Technological Modernization

AGENCY: Federal Election Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking additional public comment on previously proposed rules that would modernize the agency’s regulations in light of technological advances in communications, recordkeeping, and financial transactions, and that would eliminate and update references to outdated technologies and address similar technological issues. In particular, the Commission presently seeks comments on whether its definition of “public communication” should also include internet communications that are “promoted for a fee” on another person’s website, digital device, application, or advertising platform. The Commission also seeks to elicit comments concerning whether “internet public communications,” a new defined term, should include public communications “promoted for a fee” on another person’s website, digital device, application, or advertising platform. No final decision has been made by the Commission on the issues presented in this rulemaking.

DATES: Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: All comments must be in writing. Commenters may submit comments electronically via the Commission’s website at <http://sers.fec.gov/fosers/>, reference REG 2013-01.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the

Commission’s website and in the Commission’s Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver’s license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Joanna S. Waldstreicher or Mr. Tony Buckley, Attorneys, Office of the General Counsel, at techmod@fec.gov, or at (202) 694-1650 or (800) 424– 9530.

SUPPLEMENTARY INFORMATION:

The Commission published its original proposals in a Notice of Proposed Rulemaking (“NPRM”) on November 2, 2016.¹ The Commission had previously issued an Advance Notice of Proposed Rulemaking (“ANPRM”) on the subject.² The Commission received several public comments in response to both the ANPRM and the NPRM, which are available on the Commission’s website at <https://sers.fec.gov/fosers/search.htm> (reference REG 2013-01). On September 8, 2022, the Commission requested additional comment about any technological developments relating to electronic payment processing, newer electronic payment technologies, and contributions made via prepaid cards that may have occurred following publication of the NPRM that would be relevant to the Commission’s consideration of its proposed rules.³ The Commission received several public comments in response to its Request for Additional Comment, which are available on the Commission’s website at <https://sers.fec.gov/fosers/search.htm> (reference REG 2013-01).

The Commission presently seeks public comment with respect to one of its proposals to modernize campaign finance regulations in light of technological advances. In a separate

¹ Technological Modernization, 81 FR 76416 (Nov. 2, 2016).

² Technological Modernization, 78 FR 25635 (May 2, 2013).

³ Technological Modernization, 87 FR 54915 (Sept. 8, 2022).

rulemaking, the Commission changed the definition of “public communication” at 11 CFR 100.26 and adopted a new defined term— “internet public communication”—which appears at new 11 CFR 110.11(c)(5)(i). *See generally* REG 2011-02: Draft Final Rule and Explanation and Justification for Internet Communications Disclaimers (Agenda Doc. 22-52-B) (“Internet Communications Rule”). The revised definition of “public communication” at § 100.26 includes those communications that are “placed for a fee on another person’s website, digital device, application, or advertising platform.” Internet Communications Rule at 16. The new defined term “internet public communication” at new § 110.11(c)(5)(i) parallels the revised definition of “public communication” at § 100.26 by defining “internet public communication” as “any public communication over the internet that is placed for a fee on another person’s website, digital device, application, or advertising platform.” Internet Communications Rule at 26.

In light of the changes in the Internet Communications Rule, as well as developments in advertising practices on the internet, the Commission seeks comments on whether the revised definition of “public communication” at § 100.26, and the new term “internet public communication” at § 110.11(c)(5)(i), should also include communications that are “promoted for a fee” on another person’s website, digital device, application, or advertising platform, and whether such communications that are “promoted for a fee” should be subject to the Commission’s disclaimer requirements.

The Commission also seeks comments on how general public political advertising on the internet would be affected by the inclusion of the phrase “promoted for a fee” on another person’s website, digital device, application, or advertising platform in §§ 100.26 and 110.11(c)(5)(i), and whether the wide and rapidly expanding array of options available in the internet advertising market bring to bear any particular considerations or concerns of which the Commission should be mindful or that warrant a particular approach.

To this end, the Commission seeks comments about whether, both for purposes of the term “internet public communication” and the Commission’s disclaimer requirements, a

distinction should be made between communications over the internet where (1) a person is paid to republish content containing express advocacy or soliciting a contribution on a third party's website, digital device, application, or advertising platform in order to increase the circulation or prominence of that content; (2) a website, digital device, application, or advertising platform is paid directly to "boost" or expand the scope of viewership of content containing express advocacy or soliciting a contribution in order to increase the circulation or prominence of that content; and (3) a person is paid to create or generate content containing express advocacy or soliciting a contribution, which then appears on a third party's website, digital device, application, or advertising platform.

Finally, the Commission is soliciting comments concerning whether and how this proposed change to the definitions of "public communication" and "internet public communication" would affect regulated entities broadly, including in contexts unrelated to the required disclaimers for a given communication.

Conclusion

As explained above, the Commission is soliciting comments concerning the proposed addition of certain communications "promoted for a fee" to its definitions of "public communication" and "internet public communication." The details of this proposal can be found on the Commission's website at <https://sers.fec.gov/fosers/search.htm> (reference REG 2011-02). The Commission's goal in this rulemaking is to promulgate final rules that are flexible enough to encompass both non-electronic and electronic forms of payments, communications, and internet advertising, and that remain relevant as new forms of information storage, communication, payment, and advertising methods and media emerge and develop in the future. Accordingly, the Commission welcomes comments on the issues and questions addressed by this rulemaking, and on any related issues.

On behalf of the Commission,

Dated: December 1, 2022.
Allen J. Dickerson,

Chairman,
Federal Election Commission.

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